

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

|                    |   |                               |
|--------------------|---|-------------------------------|
| JOE KENDALL,       | ) |                               |
|                    | ) |                               |
|                    | ) | Civil Action File             |
| Plaintiff,         | ) | No. <u>5:21-cv-00109- TES</u> |
|                    | ) |                               |
| vs.                | ) |                               |
|                    | ) |                               |
| KYGO MASONRY, LLC, | ) |                               |
|                    | ) | JURY DEMAND                   |
| Defendants.        | ) |                               |

**DECLARATION OF GORDON VAN REMMEN**

The undersigned Gordon Van Remmen, as one of Plaintiff's counsel, makes the following declaration under oath:

1. I am Gordon Van Remmen, counsel for Plaintiff in the above-styled action. I am above the age of eighteen (18) years and am a resident of the State of Georgia. I am competent to give all of the testimony contained in this Declaration and all of it is based upon my personal knowledge.

2. The Complaint (Doc. 1) and Summons (Doc. 2) list the address of Defendant's registered agent, USCA Inc., as 100 Oxmoor Road Suite 110, Birmingham, AL 35209. This address was on file for Defendant with the Alabama Secretary of State. See, Exhibit A to Van Remmen Decl., Defendant's filing with the Alabama Secretary of State.

3. Plaintiff's process server discovered that Defendant's registered agent, USCA Inc., had moved and perfected service at the correct address and noted the change of address on the Return of Service Executed. Doc. 3, Return of Service Executed.

4. The Return of Service Executed (Doc. 3) lists Amanda Cawthorn as the party served. Ms. Cawthorn was the employee on duty at USCA Inc. and received service on behalf of KYGO as the registered agent.

5. Plaintiff sent a copy of the Motion for Clerk's Entry of Default to an address listed for Defendant on Google. See, Exhibit B to Van Remmen Declaration, Google Search for KYGO Masonry LLC.

#### **DEFAULT JUDGMENT SHOULD BE GRABTED AGAINST DEFENDANT**

6. Plaintiff was not paid for all the hours that he worked while working for Defendant.

7. Defendant refused to pay Plaintiff properly for overtime compensation for all hours worked in excess of 40 hours in a work week as required by federal law.

8. Nothing in the record or otherwise shows that this failure was anything other than willful.

#### **DAMAGE CALCULATION**

9. Plaintiff suffered damages of \$10,880.00 in unpaid wages during the relevant period, April 1, 2018 through November 27, 2020.

**Period 1- April 1, 2018 through September 27, 2020.**

| <b>Period 1 – Overtime Damages</b> |            |
|------------------------------------|------------|
| Avg. overtime hours/week           | 5          |
| Damage Rate per hour               | \$12.50    |
| Total Weeks                        | 130        |
| Total Unpaid OT Wages              | \$8,125.00 |

10. For the period April 1, 2018 through September 27, 2020 (Period 1), Plaintiff suffered damages of \$8,125.00 in unpaid overtime wages.

11. For Period 1, because Plaintiff was paid straight time for all hours worked, Plaintiff's damage rate is \$12.50 per overtime hour (half of his hourly wage of \$25.00 per hour).

12. Plaintiff was damaged by \$8,125.00 in unpaid overtime wages (5 overtime hours x 130 weeks x \$12.50 per hour).

**Period 2- September 27, 2020 through November 27, 2020.**

13. For the period September 27, 2020 through November 27, 2020 (Period 2), Plaintiff suffered damages of \$2,755.00 in unpaid overtime and minimum wages.

| <b>Minimum Wage Damages</b> |            |
|-----------------------------|------------|
| Avg. hours/week             | 45         |
| Damage Rate per hour        | \$7.25     |
| Total Weeks                 | 8          |
| Total Unpaid Minimum Wages  | \$2,610.00 |

14. Plaintiff's damage rate is \$7.25 per hour (minimum wage).

15. Plaintiff was damaged by \$2,610.00 in unpaid minimum wages (45 hours x 8 weeks x \$7.25 per hour).

| <b>Period 2 – Overtime Damages</b> |          |
|------------------------------------|----------|
| Avg. overtime hours/week           | 5        |
| Damage Rate per hour               | \$3.63   |
| Total Weeks                        | 8        |
| Total Unpaid OT Wages              | \$145.00 |

16. Of the 45 hours per week that Plaintiff worked during Period 2 (8 weeks), five of these hours were overtime hours.

17. Plaintiff's damage rate for Period 2 is \$3.63 per hour (half of minimum wage).

18. Plaintiff was damaged by \$145.00 in unpaid overtime wages (5 overtime hours x 8 weeks x \$3.63 per hour).

19. Plaintiff's total wage damage for Period 2 totals \$2,755.00 (\$2,610.00 in unpaid minimum wages + \$145.00 in unpaid overtime wages).

20. The total damages under the FLSA therefore are \$21,760.00 (\$10,880.00 in actual damages + \$10,880.00 in liquidated damages) plus attorneys' fees and costs.

21. The reasonable attorneys' fees to date relating to this matter are \$9,660.00.

22. The costs of this ligation to date are \$562.00 which include the filing fee and service costs.

### **DAMAGES SUMMARY**

23. Plaintiff's sum certain damages are as follows:

\$10,880.00 in actual damages

\$10,880.00 in liquidated damages

\$9,660.00 in reasonable attorneys' fees

\$562.00 in costs

\$31,982.00 in total damages

### **ATTORNEYS FEES AND COSTS**

24. The report attached as **Exhibit C** were prepared from contemporaneous billable time records maintained in the normal course of the Plaintiff's counsels' firm business. Plaintiff's counsels' lodestar for reasonable attorneys' fees in prosecuting this action as of June 22, 2021 was \$9,660.00.

25. Plaintiff's counsel undertook risk in the case by taking the matter on a contingency basis and, thus, were not guaranteed any payment for fees. Plaintiff's counsel have not been compensated for any time nor had any expenses reimbursed since the litigation began.

26. Under the legal services agreement between Plaintiff and Plaintiff's counsel, Plaintiff's counsel is entitled to receive attorneys' fees recovered from the defendant(s) pursuant to any fee-shifting provisions of the applicable law or pursuant to a settlement that specifically sets aside attorneys' fees to be paid to the Attorneys.

27. The total costs incurred to date are \$562.00 and include the filing fee and service costs.

28. Plaintiff's counsel was required to spend excess time in this case moving to seek a clerk's entry of default and this motion for default judgment because Defendant failed to file any response or hire an attorney.

29. Hall & Lampros, LLP lawyers have extensive experience litigating complex cases including serving as lead or co-lead counsel in the following cases: *Blessing v. Sirius XM Radio, Inc.*, No. 1:09-cv-10035 (S.D.N.Y.) (co-lead counsel representing class in antitrust, breach of contract, and consumer protection class action resulting in settlement valued at \$180 million on behalf of class); *Americo Financial Life and Annuity Insurance Co. et al. v. Elsner*, No. 011-07539-33 (representing life insurance companies in state RICO action alleging that enterprise defrauded insurer of prepaid commissions, resulting in court-ordered freeze of defendant assets pending lawsuit and confidential settlement); *Medco Health Solutions, Inc. et al. v. West Virginia Public Employees Insurance Agency*, 02-c-2764, Circuit Court of Kanawha County, West Virginia (representing public health insurance agency with approximately 180,000 covered lives in breach of contract and fiduciary duty counterclaims resulting in \$5.5 million settlement); *West Virginia ex rel. Attorney General v. Bank of America, N.A., et al.*, No. 08-02516 (S.D. N.Y.) (claims on behalf of dozens of West Virginia government agencies alleging antitrust

price fixing relating to the sale of municipal bond derivatives); *Faith Enterprises Group, Inc. v. Avis Budget Group, Inc. et al.*, No. 11-cv-03166 (ND. Ga.) (co-lead counsel in a putative class action against Avis by independent operators under RICO and for breach of fiduciary duty); *Simmons, et al. v. Valspar Corp.*, No. 10-3026 (U.S.D.C. for the District of Minnesota) (national collective action brought under the FLSA).

30. Andrew Lampros is a partner at Hall & Lampros, LLP and a 1999 graduate from Wake Forest University School of Law. Mr. Lampros has been practicing law for over 21 years. After graduating from law school, he practiced insurance litigation for approximately four years and tried a number of cases to jury verdict. Beginning in 2003, he began a plaintiffs' practice and has litigated and tried numerous cases on behalf of individuals and small businesses in individual and representative capacities. He has tried many cases to jury verdict in both state and federal courts recovering millions of dollars on behalf of his clients. He was co-lead counsel in the *Simmons v. Valspar Corp.*, supra, matter, a national collective action brought pursuant to the FLSA. Mr. Lampros's reduced billing rate for this case is \$450.00 and reflects his trial and litigation experience and is consistent with the market rate for similar attorneys.

31. I, the undersigned attorney, am an associate attorney at Hall & Lampros, LLP and a 2015 graduate of the University of Georgia School of Law. I

have been a member of the bar since 2015, and I have focused on employment litigation. I have represented Plaintiffs in over twenty (20) FLSA cases. My hourly rate is \$375.00 per hour.

32. Brittany A. Barto is an associate attorney at Hall & Lampros, LLP and a 2019 graduate of the Georgia State University College of Law. She has been a member of the bar since 2019 and has worked on numerous employment litigation cases. Ms. Barto's hourly rate is \$250.00 per hour.

33. The fees above are consistent with the rates in the local market.

Pursuant to 28 U.S.C. §1776, I declare under penalty of perjury that the foregoing is true and correct.

This June 22, 2021.



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Gordon Van Remmen



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| Defendants.        | ) |                               |

**EXHIBIT A TO DECLARATION OF GORDON VAN REMMEN**



# Alabama Secretary of State



| KYGO Masonry, LLC  |   |
|--|---|
| Entity ID Number   | 393 - 577   |
| Entity Type  | Domestic Limited Liability Company                |
| Principal Address  | Not Provided                                      |
| Principal Mailing Address  | Not Provided                                      |
| Status   | Exists  |
| Place of Formation   | Jefferson County                                  |
| Formation Date   | 6-7-2017  |
| Registered Agent Name  | USCA INC  |
| Registered Office Street Address   | 100 OXMOOR ROAD SUITE 110<br>BIRMINGHAM, AL 35209 |
| Registered Office Mailing Address  | 100 OXMOOR ROAD SUITE 110<br>BIRMINGHAM, AL 35209 |
| Nature of Business   |   |
| Organizers   |   |
| Organizer Name   | LEGALZOOM.COM INC                                 |
| Organizer Street Address   | 9900 SPECTRUM DR<br>AUSTIN, TX 78717              |
| Organizer Mailing Address  | 9900 SPECTRUM DR<br>AUSTIN, TX 78717              |
| Annual Reports   |   |
| <p>Annual Report information is filed and maintained by the Alabama Department of Revenue. If you have questions about any of these filings, please contact Revenue's Business Privilege Tax Division at 334-242-1170 or <a href="http://www.revenue.alabama.gov">www.revenue.alabama.gov</a>. The Secretary of State's Office cannot answer questions about or make changes to these reports.</p> |   |
| Report Year  | <a href="#">2018</a>                              |
| Transactions   |   |
| Transaction Date   | 6-12-2017   |
| Miscellaneous Filing Entry   | New Entity Effective 06-07-2017 12:03             |
| Scanned Documents  |   |
| Purchase Document Copies   |   |
| Document Date / Type / Pages   | 6-12-2017 Certificate of Formation 5 pgs.         |
|  |   |

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**EXHIBIT B TO DECLARATION OF GORDON VAN REMMEN**



KYGO Masonry LLC


[All](#)
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[Images](#)
[Shopping](#)
[Maps](#)
[More](#)
[Settings](#)
[Tools](#)

About 285,000 results (1.07 seconds)

<https://www.bbb.org> › [troy](#) › [profile](#) › [mason-contractors](#)

### Kygo Masonry, LLC | Better Business Bureau® Profile

BBB accredited since 5/29/2020. Mason Contractors in Troy, AL. See BBB rating, reviews, complaints, request a quote & more.

#### Kygo Masonry, LLC

Kygo Masonry, LLC ... BBB serves as a place to resolve ...

[More results from bbb.org »](#)
<https://www.dnb.com> › ... › [ALABAMA](#) › [TROY](#)

### Kygo Masonry Company Profile | Troy, AL | Competitors ...

A Hoovers subscription is your VIP access to key information. D & S **Masonry LLC**. Troy, Alabama, US. Unlock information on ...

[Credit Reports](#) · [Company Snapshot](#)
<https://www.pacermonitor.com> › [public](#) › [case](#) › [KEND...](#)

### KENDALL v. KYGO MASONRY LLC (5:21-cv-00109), Georgia ...

Apr 1, 2021 — KENDALL v. **KYGO MASONRY LLC** (5:21-cv-00109), Georgia Middle District Court, Filed: 04/01/2021 - PacerMonitor Mobile Federal and ...

<https://www.homeadvisor.com> › [rated.KygoMasonryLL...](#)

### Kygo Masonry, LLC - Read Reviews | Troy, AL 36079 ...

**Kygo Masonry, LLC** | HomeAdvisor prescreened Brick & Stone Contractors, Concrete Contractors in Troy, AL.

Rating: 5 · 1 review

<https://genconbd.alabama.gov> › [detail](#)

### Untitled Page - Alabama Licensing Board for General ...

License Number, S-52863. Name, **KYGO MASONRY LLC**. Address, 1 RIVER RIDGE ROAD. City, TROY. State, AL. Zip Code, 36079. Phone Number, (334) 770- ...

[See outside](#)

## Kygo Masonry

[Directions](#)
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3.7

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Masonry contractor in Troy, Alabama

**Address:** 1 River Ridge Rd, Troy, AL 36079

**Hours:** [Open](#) · Closes 5PM ▾

**Phone:** (334) 770-0320

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**EXHIBIT C TO DECLARATION OF GORDON VAN REMMEN**

| <b>Hall &amp; Lampros Attorneys' Fees</b> |              |             |                    |
|---|--------------|-------------|--------------------|
| <b>Timekeeper</b>                         | <b>Hours</b> | <b>Rate</b> | <b>Lodestar</b>    |
| Andrew Lampros                            | 2.3          | \$ 450.00   | \$ 1,035.00        |
| Gordon Van Remmen                         | 20.4         | \$ 375.00   | \$ 7,650.00        |
| Brittany Barto                            | 3.9          | \$ 250.00   | \$ 975.00          |
| <b>Total</b>                              | 26.6         |             | <b>\$ 9,660.00</b> |